Atty Docket: Belersdorf 665.1

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Applicants request that this be considered a petition therefore. Please charge the required fee to Deposit Account No. 14-1263.

ADDITIONAL FEES

Please charge any further insufficiency of fees, or credit any excess to Deposit Account No. 14-1263.

REMARKS

Claims 7-12 and 14-15 are pending in the application. Claims 7 and 14 are amended. New claims 17 to 20 are added. Support for the claims 17-20 can be found, e.g., on page 4 and throughout the examples. No amendment to the claims adds new matter.

The claims are alleged to be unpatentable in view of Stäb in view of Defossez.

In view of the amendments and remarks, favorable reconsideration is respectfully requested.

Response to Examiner's Remarks

Examiner maintains the rejections apparently because she is not persuaded that the claimed combination's non-crystallizing properties are insufficient to render the claims allowable. In part, Examiner seems to suggest that Stäb does in fact suggest this property, while the Applicants' position is that the references cannot reasonably be viewed as teaching or suggesting that the claimed combination results in a noncrystallizing composition.

Page 2 of the office action states that [a] Stäb discloses his compositions are stable, and [b] nowhere is the solubility issue raised.

Stäb's statement, upon which Examiner relies, relating to the stability of his compositions has absolutely nothing to do with the solubility of component (a) in the presence of component (b). The text immediately preceding and encompassing the text cited by Examiner, col 3, lines 7-21+, clearly indicates that the stability issues described refer to the composition's lipid stability against oxidation. In fact, the entire patent is devoted to achieving greater stability against free radical mediated oxidation by including cis-urocannic acid as an anti-oxidant.

Respectfully, the stability alluded to on line 21 relates to the lipid components' enhanced resistance to free radical oxidation and has nothing to do with the issues at hand; the improved solubility of component (a) in the presence of component (b). Lines 14-15. Thus, it is not reasonable to maintain the rejection based on such a portion of the disclosure.

Moreover, it is irrelevant that Stäb did not disclose the solubility issue, as no applicant is obligated to disclose a particular problem in the art that he did not care to address. Few if any patents disclose the sources of all problems known to exist in a particular art. Respectfully, Stäb's lack of interest in the triazine's limited solubility has no legal relevance.

However, factually, it clearly supports Applicants' position that there could not have been any reasonable suggestion in the art to combine them.

Applicants consider that perhaps Examiner meant to suggest that Stäb's lack of disclosure in the triazine solubility issue was evidence that no such issue exists. If so, Applicants would remind the Examiner that the facts disclosed in the specification must be accepted as true in the absence of reasonable doubts supported by sound technical reasoning or evidence. *In re Marzocchi et al.*, 169 USPQ 367, 369 (CCPA 1971). Respectfully, Stäb's silence on the solubility issue does not rise to the level of sound technical reasoning or evidence.

In sum, it is requested that Examiner reconsider maintaining the rejection in view of the reference's not addressing or even disclosing the problem solved by Applicants.

New Claims 17-20 Are Believed Allowable

Should Examiner feel it necessary to maintain the rejection, it is respectfully suggested that new claims 17-20 each comprise allowable subject matter.

The combined references do not teach or suggest compositions having the claimed combination with an olly phase and an aqueous phase as required in claims 17-18.

Stäb's Sun Gel example 19 cited in the office action at the bottom of page 2+, is a non-aqueous gel composition. This is likely one reason why the triazine solubility was not addressed – it was used in a solid-gel form.

Further, in contrast with claims 19-20, the references cannot reasonably be viewed as specifically disclosing the weight ratios of components (a)/(b). No where in these references is such a variable even alluded to, let alone attributed specific values. This ratio reflects the specific functional interaction between components (a) and (b).

Should Examiner believe that this ratio of (a)/(b) is merely a variable that is routinely optimized, it is respectfully noted that MPEP 2144.05 section II (Optimization of Ranges) states "***A particular parameter must first be recognized as a result-effective variable***, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)."

It is Applicants' position that the references do not demonstrate such a relationship between component (a) and (b). Accordingly, claims 19-20 overcome the prior art.

CONCLUSION

Applicants respectfully request favorable consideration in view of the remarks and the amendments.

Should there be further issues to resolve, Examiner should feel free to contact the undersigned at any time.

Respectfully Submitted,

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Atty Docket: Belersdorf 665.1

AMENDMENT TO THE CLAIMS

Amend the claims as follows:

1. to 6. (Canceled)

7 (Currently amended). A non-crystallizing cosmetic or of dermatological composition suitable for protecting skin and/or hair from the damaging effects of light, said cosmetic or dermatological composition comprising a light protective effective amount of a combination of:

a) tris(2-ethylhexyl) 4,4',4"-(1,3,5-triazine-2,4,6 triyltriimino)trisbenzoate; and

b) hexyldecyl laurate.

8 (Previously presented) The cosmetic or dermatological composition according to claim 7, which comprises 0.1 to 10.0% by weight of tris(2-ethylhexyl) 4,4',4"-(1,3,5-triazine-2,4,6triyltriimino)trisbenzoate based on the total weight of the composition.

9. (Previously presented) The cosmetic or dermatological composition according to claim 8, which comprises 0.5 to 6.0% by weight of tris(2-ethylhexyl) 4,4',4"-(1,3,5-triazine-2,4,6 triyltriimino)trisbenzoate based on the total weight of the composition.

10. (Previously presented) The cosmetic or dermatological composition according to claim 7, which comprises a total of 0.1 to 25.0% by weight of hexyldecyl laurate based on the total weight of the composition.

11. (Previously presented) The cosmetic or dermatological composition according to claim 10, which comprises a total of 0.5 to 15.0% by weight of hexyldecyl laurat based on the total weight of the composition.

12. (Previously presented) The cosmetic or dermatologicl composition according to any one of claims 7-11, wherein the hexyldecyl laurate is present in the composition in admixture with one or more of its parent alcohols.

13. (Canceled)

14. (Currently amended) A method of protecting skin and/or hair from the damaging effects of light, said method comprising topically applying to skin and/or hair a light protective effective amount of a cosmetic or dermatological composition according to ~~any one of claims 7-11.~~ claim 7.

15. (Previously presented) A method of protecting skin and/or hair from the damaging effects of light, said method comprising topically applying to skin and/or hair a light protective effective amount of a cosmetic or dermatological composition according to claim 12.

16. (Canceled)

17 (New). The non-crystallizing cosmetic or dermatological composition of claim 7, wherein the composition comprises an oily phase and an aqueous phase.

18. (New). The non-crystallizing cosmetic or dermatological composition of claim 7, wherein the composition is selected from the group consisting of O/W emulsions, O/W microemulsions, W/O emulsions and W/O microemulsions.

19. (New). The composition of claim 7, wherein the ratio of the wt.-percentagages of component (a)/(b) is between 0.1 to 1.0.

20. (New). The composition of claim 7, wherein the ratio of the wt.-percentagages of component (a)/(b) is between 0.25 to 4.0.